INDEX

CITATIONS

Cases:

In the Supreme Court of the United States

OCTOBER TERM, 1956

No. ——

CIVIL AERONAUTICS BOARD, PETITIONER

v.

IDA MAE HERMANN, ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

The Solicitor General, on behalf of the Civil Aeronautics Board, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered in the above case on August 2, 1956.

OPINION BELOW

The memorandum of the district court (R. 143–144) is not reported. The opinion of the court of appeals (Appendix, pp. 15–22) is not yet reported.

JURISDICTION

The judgment of the court of appeals (Appendix, p. 23) was entered on August 2, 1956. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether the Civil Aeronautics Board, in order to obtain judicial enforcement of subpoenas *duces tecum* (issued during an administrative proceeding) for production of groups of documents, is required to satisfy the court that each of the documents is "relevant and material" to the issues in the proceeding, and is in the possession of the person to whom the subpoena is directed.

2. Whether the Board, prior to issuing such subpoenas, is required (*a*) to "take testimony" in a preliminary administrative hearing to determine the existence and location of the documents, and then (*b*) to inspect the documents to determine their relevancy and materiality.

STATUTE INVOLVED

Section 1004 of the Civil Aeronautics Act of 1938, as amended, 52 Stat. 1021, 49 U. S. C. 644, provides as follows:

EVIDENCE

> (a) Any member or examiner of the Authority [Board], when duly designated by the Authority [Board] for such purpose, may hold hearings, sign and issue subpenas, administer oaths, examine witnesses, and receive evidence at any place in the United States designated by the Authority [Board]. In all cases heard by an examiner or a single member the Authority [Board] shall hear or receive argument on request of either party.

POWER TO ISSUE SUBPENA

(b) For the purposes of this Act the Authority [Board] shall have the power to require by subpena the attendance and testimony of witnesses and the production of all books, papers, and documents relating to any matter under investigation. Witnesses summoned before the Authority [Board] shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

ENFORCEMENT OF SUBPENA

(c) The attendance of witnesses, and the production of books, papers, and documents, may be required from any place in the United States, at any designated place of hearing. In case of disobedience to a subpena, the Authority [Board], or any party to a proceeding before the Authority [Board], may invoke the aid of any court of the United States in requiring attendance and testimony of witnesses and the production of such books, papers, and documents under the provisions of this section.

CONTEMPT

(d) Any court of the United States within the jurisdiction of which an inquiry is carried on may, in case of contumacy or refusal to obey a subpena issued to any person, issue an order requiring such person to appear before the Authority [Board] (and produce books, papers, or documents if so ordered) and give evidence touching the matter in question; and any failure to obey such order of the court

may be punished by such court as a contempt thereof.

STATEMENT

On October 14, 1954, the Civil Aeronautics Board instituted an administrative enforcement proceeding against a group of individuals and business entities who collectively constitute, and operate as, the "Skycoach" air travel system (R. 14–38). The respondents in that proceeding are two irregular air carriers (Great Lakes Airlines and Currey Air Transport); two individuals (Ida Mae and Irving E. Hermann); a partnership of such individuals engaged in the ownership and leasing of aircraft; two corporations which supply gasoline products and perform banking functions, respectively; and twelve "Skycoach" ticket agency corporations.

The principal charges made by the Board's complaint (R. 15–35) were as follows:

1. The individual respondents have acquired and maintained control of the other respondents, in violation of Section 408 (a) of the Act (49 U. S. C. 488 (a)). This has been accomplished through nominees or stock ownership; control of property, employees and equipment; leasing of aircraft; control of traffic solicitation and handling; financial management and control; and agreements, arrangements, and understandings of various types (R. 24–25, 26–27, 32–33).

2. The two air carrier respondents, through agreements between themselves and the other respondents, have collectively held out and operated regular and frequent air transportation service between designated

points, in violation of Section 401 of the Act (49 U. S. C. 481) and Part 291 of the Board's Economic Regulations (14 CFR 291.1, *et seq.*) (R. 19–22). The carriers and ticket agents have, on numerous occasions, violated the Board's Economic Regulations with respect to methods of ticketing passengers, the form of tickets used, and agreements between the carriers and the ticket agents (R. 30–32).

3. All of the foregoing violations were knowing and wilful, and were deliberately planned and executed for the purpose of evading and circumventing the Act and the regulations promulgated thereunder, and for the purpose of concealing from the Board the true nature of the operation (R. 34).

In the course of this proceeding, the Hearing Examiner issued a number of subpoenas *duces tecum* directed to several of the respondents, their officers and employees, and independent auditors and advertising agencies under contract with them (R. 39–60). The subpoenas called for production of the following categories of documents: (1) financial and corporate records of certain of the respondents (including personal income tax returns); (2) correspondence, memoranda, and agreements between the respondents; (3) personnel records of certain of the respondents; (4) data relating to ownership, identification, and utilization of aircraft and assignment of flight personnel; (5) advertising material disseminated to the public by radio, newspapers, display posters, and business cards; (6) airline tickets used by some of the respondents (flight coupons, auditor and agent coupons, and specimens of tickets and exchange orders).

Respondents moved to quash the subpoenas on the ground that they were burdensome and constituted a general fishing expedition into their affairs. The motion was denied by the Hearing Examiner, and then by the Board, which held that

> The subpoenas are not vague and indefinite, or incapable of understanding. Each one specifies the period concerning which documents and records are to be produced where appropriate, and describes the desired materials with particularity. In the light of the charges against the respondents, and particularly those relating to common control and activities constituting air transportation on the part of the non-carrier respondents, it does not appear to us that the subpoenas are excessively broad or unreasonable in scope. * * * They do not constitute fishing expeditions, but rather are requests for material relevant to previously defined charges and issues. [R. 64–65, 66.]

Respondents refused to comply with the subpoenas (R. 13), and the Board then filed in the district court a petition for their enforcement. (R. 3–13). The court (Judge Peirson M. Hall) initially continued the cause for ten days, on condition that certain of the respondents make the records available at their places of business to representatives of the Board (R. 115–116). The inspection proved abortive, however, because the respondents failed to produce many of the items covered by the subpoenas (R. 117–126). After further hearings, the district court on May 17, 1955 issued an order enforcing the subpoenas substantially

as issued (R. 144). In a memorandum (R. 143), the court stated:

> In laying the subpoenas alongside the charges in the Complaint, this Court cannot say that any of the documents or things called for in any of the subpoenas are immaterial or irrelevant to the proceedings before the Board, without an examination of all of the documents and things themselves, which this Court is not called upon to do at this stage of the proceedings.

On appeal, the court of appeals reversed the district court's order of enforcement, and remanded for further proceedings.[1]

The court, in an opinion by Judge James Alger Fee, held (Appendix, p. 19) that, "[i]n order to prevent their action from being arbitrary and oppressive," the Board should observe the following procedures in issuing subpoenas *duces tecum:*

1. It should first call the individuals concerned "and take testimony as to the existence and custody of the documents" and thus establish their "[m]ateriality and relevance to the issues before the Board."

2. In the exercise of its "power of inspection" the Board should then examine, photograph and copy "all the documents * * * without regard to materiality and relevancy."

3. If, after the inspection, the Board finds that there probably are other documents "relevant and material to the issue" or that they are being con-

[1] The district court's order was stayed pending appeal (R. 154–161).

cealed, "then again a witness can be called and examined regarding these features."

4. Subpoenas should be issued only after the foregoing proceedings, and they "should not designate all the documents in the class, but only those which the Board has found are in the possession or under the control of the persons to whom directed and which are relevant and material to the issue."

Upon a petition for enforcement of the subpoenas, the district court must determine "whether *each* of the documents subpoenaed is relevant and material" (Appendix, p. 20). [Emphasis added.]

The court of appeals directed the district court, upon remand, to determine (by inspecting the documents, if necessary) whether the "individual documents" in the possession of the persons to whom the subpoena is directed (1) "have been sufficiently defined and described," (2) whether "each is material and relevant," and (3) whether the demand is "oppressive and unreasonable" (Appendix, p. 22).[2]

REASONS FOR GRANTING THE WRIT

The novel and burdensome procedures which the court of appeals has prescribed for the issuance and enforcement of administrative subpoenas are contrary to the settled principles in this field, and would seriously interfere with the prompt and efficient conduct

[2] The court of appeals also directed the district court to consider whether the income tax returns which had been subpoenaed constituted an invasion of the "privacy of third persons" because such returns "relate entirely to their personal affairs" (Appendix, pp. 21–22).

of administrative, investigatory and enforcement proceedings by the Civil Aeronautics Board and by other governmental agencies.

1. The court of appeals held that the Board is not entitled to judicial enforcement of a subpoena *duces tecum* unless it affirmatively establishes that "each" of the documents subpoenaed is "relevant and material" to the inquiry, and is in the possession of the person to whom the subpoena is addressed. However, this Court and numerous courts of appeals (including the court below) have consistently enforced subpoenas designating documents by broad classes, without any showing as to the relevancy and materiality of individual documents, or that the persons subpoenaed possess the documents. *E. g., Consolidated Rendering Company* v. *Vermont,* 207 U. S. 541; *Wheeler* v. *United States,* 226 U. S. 478; *Brown* v. *United States,* 276 U. S. 134; *Oklahoma Press Publishing Co.* v. *Walling,* 327 U. S. 186; *Newfield* v. *Ryan,* 91 F. 2d 700 (C. A. 5) certiorari denied 302 U. S. 729; *McGarry* v. *Securities and Exchange Commission,* 147 F. 2d 389 (C. A. 10); *Hagen* v. *Porter,* 156 F. 2d 362 (C. A. 9), certiorari denied, 329 U. S. 729; *Mines and Metals Corp.* v. *Securities and Exchange Commission,* 200 F. 2d 317 (C. A. 9).[8] All that

[8] The *Consolidated Rendering*, *Wheeler* and *Brown* cases all involved grand jury subpoenas. However, the settled limitations on the scope of inquiry into the validity of such subpoenas (see *Blair* v. *United States*, 250 U. S. 273) are equally applicable to administrative subpoenas. *Perkins* v. *Endicott Johnson Corp.*, 128 F. 2d 208, 213–14 (C. A. 2), affirmed, 317 U. S. 501; *Genecov* v. *Federal Petroleum Board*, 146 F. 2d 596 (C. A. 5).

is required for enforcement is a showing that "the documents sought are relevant to the inquiry." *Oklahoma Press* case, *supra*, p. 209. The standard of relevancy varies "in relation to the nature, purposes and scope of the inquiry" (*ibid.*), and enforcement has been directed upon a showing that the material is "not plainly * * * irrelevant to any lawful purpose of the agency" (*Endicott Johnson Corp.* v. *Perkins*, 317 U. S. 501, 509), that it "relates to or touches the matter under investigation" (*Cudahy Packing Co.* v. *National Labor Relations Board*, 117 F. 2d 692, 694 (C. A. 10), or that it is "probably relevant" to a lawful investigation (*Smith* v. *Porter*, 158 F. 2d 372, 374 (C. A. 9), certiorari denied, 331 U. S. 816; see *Jackson Packing Co.* v. *National Labor Relations Board*, 204 F. 2d 842, 843 (C. A. 5)). Questions as to the relevancy and materiality of individual documents are, we submit, properly for the determination of the examiner when the documents ultimately are offered in evidence at the hearing, and not for the district court when called upon to enforce subpoenas covering groups of documents.

The basic issues in the Board's administrative proceeding here are whether the two individual respondents have acquired and retained control of two airlines and a number of affiliated companies, and whether they have operated a scheduled airline, in violation of the Civil Aeronautics Act and the Board's regulations. The documents here sought—financial, corporate and personnel records, correspondence and agreements of the respondent companies, data relating

to aircraft and assignment of flight personnel, advertising material, and information relating to ticketing practices—were all broadly "relevant to the [Board's] inquiry" (*Federal Trade Commission* v. *American Tobacco Co.*, 264 U. S. 298, 307), and the Board was entitled to their production without showing the particular relevancy of each individual document sought.

The court below also erred, we believe, in holding that the Board, in order to obtain enforcement, is required to show that the documents are in the possession or under the control of the persons from whom production is sought. Lack of possession or control may be asserted, in appropriate circumstances, as a ground for opposing enforcement; however, the agency is not required to show possession or control as part of its affirmative case. Indeed, the court below previously had held that the question whether the person to whom an administrative subpoena was directed had "custody" or "control" of "all the documents" sought was not properly raised as a defense to an enforcement proceeding, since "the proper time to decide such an issue is when the order of the district court is disobeyed." *Mines and Metals Corporation* v. *Securities and Exchange Commission*, 200 F. 2d 317, 321; cf. *McGarry* v. *Securities and Exchange Commission*, 147 F. 2d 389, 392–393 (C. A. 10); *Hagen* v. *Porter*, 156 F. 2d 362 (C. A. 9), certiorari denied, 329 U. S. 729. Where, as here, production is sought of corporate or firm records, or of personal records of individuals, it may properly be presumed that officials of such corporations or firms, or the individuals whose

personal records are sought, in fact have possession or control.[4]

The procedures which the court of appeals directed the Board to follow prior to issuing subpoenas—to "take testimony" to determine the existence and location of the documents, and then to inspect the documents to determine their relevancy and materiality—rest primarily upon its erroneous view that, in order to obtain enforcement, the agency is required to show the relevancy and materiality of each document sought, and that it is in the possesion of the person to whom the subpoena is directed (see *supra* pp. 9–11).[5]

2. The elaborate, burdensome, and time-consuming procedures which the court of appeals has prescribed for agency and court would seriously and needlessly handicap administrative agencies in effectively exer-

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[4] The court of appeals directed the district court to consider on remand whether the subpoenas, insofar as they require production of income tax returns, invade the "privacy of third persons." But the persons from whom such returns were sought are not strangers to the case. Two of them (the Hermanns) are respondents in the Board proceeding, and the third (Robert M. Smith) is alleged to be a nominee through whom they have illegally acquired and maintained control over a number of corporations (R. 14–35). In any event, we think it clear that an agency may by subpoena compel production of pertinent tax returns. *Smith* v. *Porter*, 158 F. 2d 372, 373 (C. A. 9), certiorari denied, 331 U. S. 816.

[5] There is nothing in the Civil Aeronautics Act which would require the Board to exercise its power, under Section 407 (e), to inspect the air-carrier records and properties before exercising its subpoena power under Section 1004 (b). The two powers are separate and independent of each other. See *Westside Ford, Inc.* v. *United States*, 206 F. 2d 627, 629–630, 634 (C. A. 9); *Porter* v. *Gantner & Mattern Co.*, 156 F. 2d 886, 889–890 C. A. 9).

cising the powers which Congress has conferred upon them for obtaining information, and thus would greatly interfere with efficient and fair enforcement. For those procedures would result in a series of protracted hearings, conducted at the outset of an administrative proceeding and extending over possibly many months, in which the agency would be required to demonstrate the relevancy, materiality, and location of perhaps hundreds, or even thousands, of documents. If the agency were required to make such a showing as to each individual document to obtain enforcement of subpoenas covering broad categories of documents, the practical result would be to turn many subpoena proceedings into virtually full-dress hearings on the merits, both in the administrative agency and before the courts. Furthermore, the same issues of relevancy and materiality would again have to be determined by the examiner upon the ultimate offer of documents in evidence. Instead of achieving a greater degree of fairness to the parties, the procedures required by the court of appeals' decision plainly would produce a contrary result.

The decision below is equally applicable to the numerous other administrative agencies which possess comparable subpoena powers. Plainly, its correctness presents an important question in the administration of the Civil Aeronautics Act and other Federal regulatory statutes.

CONCLUSION

The decision below conflicts with the principles enunciated by this Court and other courts of appeals

in relation to the issuance and enforcement of administrative subpoenas, and raises broad and important questions of administrative law. It is therefore respectfully submitted that this petition for a writ of certiorari should be granted.

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OCTOBER 1956.

APPENDIX

In the United States Court of Appeals for the Ninth Circuit

No. 14778

Aug. 2, 1956

IDA MAE HERMANN, IRVING E. HERMANN, ROBERT M. SMITH, M. B. SCOTT, HAROLD SHEIN, H. D. RICHARDS, GEORGE PATTERSON, LEONARD ROSEN, ORVILLE KELMAN AND CAPTAIN G. D. THOMPSON, APPELLANTS

vs.

CIVIL AERONAUTICS BOARD, APPELLEE

Upon Appeal from the United States District Court for the Southern District of California, Central Division

Before STEPHENS, FEE and CHAMBERS, Circuit Judges

JAMES ALGER FEE, *Circuit Judge:*

This case is related to the enforcement of ten administrative subpoenas duces tecum served upon appellants in the course of a proceeding pending before a hearing examiner of the Civil Aeronautics Board.[1] The period covered by the documents required under most of the subpoenas is thirty-eight months. The

[1] This is an enforcement proceeding brought by the Compliance Section of the Board, entitled "In the Matter of Great Lakes Airlines, Inc., et al., Docket No. 6908."

individual subpoenas are comprehensive of practically all records, books and documents of or concerning the companies engaged in Docket No. 6908. The recipients of the subpoenas here in question are officers or employees of the respondent companies in Docket No. 6908 for the most part. The remaining are independent contractors who perform accounting or advertising functions for some of these companies. The hearing examiner in the administrative proceeding ordered appellants to produce all of the documents called for in each of the subpoenas at his office in Los Angeles on a day certain. The objections of appellants and the respondents in Docket No. 6908 were overruled. Upon review, the action of the examiner was affirmed by the Civil Aeronautics Board. Thereupon, after appellants had failed to produce the documents, the Board brought this case in the District Court by filing a petition to enforce the administrative subpoenas under § 644 (d) of the Civil Aeronautics Act of 1938, as amended. 49 U. S. C. A. § 644 (d).[2]

An order to show cause directed to appellants, was issued by the District Court. Appellants filed a return to the order and an answer to the petition, setting up that the subpoenas are "oppressive and unreasonable, and constitute an unreasonable search and seizure" and a "general fishing expedition of the affairs of the parties named in the said subpoenas," and further stated "that compliance with the said

[2] "Any court of the United States within the jurisdiction of which an inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any person, issue an order requiring such person to appear before the Board (and produce books, papers, or documents if so ordered) and give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof." 49 U. S. C. A. § 664 (d).

subpoenas would unduly and unreasonably hamper and interfere with the business conducted by the companies named in the said subpoenas." It is further alleged "the documents sought in the said subpoenas are not material to the issues in the proceeding known as Docket No. 6908." It was also claimed that "the said subpoenas call for the production of books, papers, records and documents which relate solely to the personal financial and business affairs of respondents Ida Mae Hermann, Irving E. Hermann, Robert M. Smith and Leonard I. Rosen, which said documents are irrelevant and immaterial to the proceeding known as Docket No. 6908."

A hearing was held by the District Court in April, 1955, entirely upon affidavits filed by the respective parties. The District Court, after limiting counsel for appellants and the Board to statements of their respective positions, issued an order on April 7, 1955, staying temporarily the enforcement of the subpoenas and continuing the cause to a day certain upon condition that appellants permit inspection and copying of the documents sought in the subpoenas of certain of appellants, excepting only the personal income tax returns called for in the subpoenas served upon appellants, Ida Mae Hermann, Irving E. Hermann and Robert M. Smith. In accordance with this order, six employees and agents of the Board were permitted to inspect and copy certain documents called for in the subpoenas during the period between April 7 and April 15, 1955. The hearing was resumed before the District Court on April 18, 1955, at which time there were presented affidavits which purported to show that appellants had not complied with the inspection order of the District Court. Thereupon, without further notice or argument on the merits, the District Court ordered all of the subpoenas en-

forced exactly as written, excepting, however, the subpoena upon which the Board did not insist. Upon rehearing, the trial court issued a final order enforcing subpoenas requiring appellants to appear before the hearing examiner and produce all the documents sought in the subpoenas commencing May 31 through June 14, 1955. This order was stayed pending appeal. It seems to be conceded that there was no showing of relevancy or materiality of the documents sought in the administrative subpoenas at any time during the hearings. There was no showing that the Board did not have on file itself the documents sought therein, and there was no showing that appellants were in possession of the documents sought or that they had control of them. The position of the Board was that the enforcement proceedings, Docket No. 6908, were such that each and all of these documents might be relevant or material thereto. In the memorandum for the order, the court made no findings that any of the documents were material or relevant to the proceedings before the Board, and took no position upon the question of whether or not some of them might be documents relating entirely to the personal affairs of some of appellants. The only basis for the order enforcement is entitled "Memorandum for Order," which says in part:

> In laying the subpoenas alongside the charges in the Complaint, this Court cannot say that any of the documents or things called for in any of the subpoenas are immaterial or irrelevant to the proceedings before the Board, without an examination of all the documents and things themselves, which this Court is not called upon to do at this stage of the proceedings.

The court also apparently ruled that, by spacing the subpoenas, two on May 31, one on June 1, two on June

2, and one each on June 6, 7, 9 and 14, the demands upon appellants would not be burdensome or oppressive.

The Civil Aeronautics Board is given broad powers of subpoena of individuals for the purpose of testifying to the matters which are before them. 49 U. S. C. A. § 644 (a), et seq. Obviously, it will be assumed that these matters will not be irrelevant to the proceeding. The Board is also given an extremely comprehensive power of inspection of all of the documents, books and papers in the office of any of the corporations or individuals operating under the control of the Board. 49 U. S. C. A. § 487 (e). In order to prevent their action from being arbitrary and oppressive, the Board should call the individuals and take testimony as to the existence and custody of the documents. Materiality and relevancy to the issues before the Board can be established in this method without the necessity of bringing truck loads of records to the hearing officer. Likewise, by the power of inspection, all the documents can be gone over, photographed and copied without regard to materiality and relevance. It is obvious that, if after these inspections the Board finds that the existence of other documents relevant and material to the issue is probable or that they are being concealed, then again a witness can be called and examined regarding these features, but the subpoenas thereafter issued should not designate all the documents in the class, but only those which the Board has found are in the possession or under the control of the persons to whom directed and which are relevant and material to the issue. It is well settled that, when a petition for the enforcement of an administrative proceeding is filed in a federal court, it initiates a case or controversy under the Constitution.[1] In

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[1] *Interstate Commerce Commission* vs. *Brimson*, 154 U. S. 447, 489.

order to have the subpoena enforced, the issue as to whether each of the documents subpoenaed is relevant and material is a judicial question which must be passed upon by the court. There are no presumptions that the administrative agency or the hearing officer has subpoenaed only those documents which are relevant and material. These are questions which are judicial and to which the expert facility of the administrative body obviously does not apply. When the trial court said that comparing the allegations of the complaint with the demands of the subpoenas, he could not say that any of the documents were irrelevant or immaterial to the proceedings, he failed to pass upon the judicial question presented to him in the case.

The other suggestion made by the trial court, that he was not required to consider relevance and materiality at this stage of the proceedings, seems likewise to have been based upon a misconception. The court had no other case or controversy before it except the one which related to the question of whether the documents should or should not be produced. This is entirely unlike a civil case in court between two adversary parties, one of whom under the rules of the court has had a subpoena duces tecum issued to the other. Even in such a proceeding, upon proper objection the court will hold that the subpoena is too comprehensive or that various of the documents sought are irrelelevant and immaterial. In a proceeding where a grand jury has subpoenaed records, the court likewise will, upon objection, prevent oppression and require that only material and relevant documents be demanded.

These points were specifically raised before the trial court and are insisted upon in this appeal. There are two phases to the problem before us. First, the objection of the entities and individuals directly under

the control of the Board whose records are subject to public inspection. As to these, the showing as to materiality and relevancy might not necessarily be as comprehensive as that required in other cases. The Board, we conceive, should have considerable leeway in order not to hamper its functions, which are highly important in the structure of government. But, on the other hand, the court should not be required to rubberstamp with approval the administrative subpoenas. Such an action would constitute the Board the final judges of the materiality and relevancy of each document subpoenaed. It is hornbook law that they have no such authority or function.* Likewise, a distinction must be drawn between an adverse enforcement proceeding and an administrative investigatory proceeding. The lines are much more sharply drawn in the former than in the latter.

The other phase of the subpoenas before us is the demand on private parties that they produce documents which they claim relate entirely to their personal affairs, such as their income tax reports. It may well be that the court, upon hearing and taking testimony, would find that such a claim was deceptive and illusory. But the court should protect the privacy of the individuals as against the encroachment of administrative bodies. Therefore, there were questions of fact here raised as far as these individuals were concerned upon which the court was bound to give consideration and to rule positively with findings of fact.

The trial court sensed that the power of inspection gave the administrative bodies a tremendous opportunity to discover what relevant documents were in the file and what they suspected had been with-

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* *Martin, Internal Revenue Agent* vs. *Chandis Securities Co.*, 33 F. Supp. 478, 480, affirmed 128 F. 2d 731.

held. An inspection under the supervision of the court was ordered. This was extremely fair and, if it had been pursued for a sufficient length of time, would have permitted the Board to issue subpoenas for the exact documents which they wished. The taking of testimony of the interested parties was not precluded thereby. If this process had been continued to its logical end, the Board could have limited the subpoenas to documents which everyone would have recognized were relevant and material and could then have proceeded to obtain those which were withheld, if any. Since the court proceeded along the proper lines in the first instance, all difficulties will now be removed by passing upon the questions of whether individual documents in the possession of the persons to whom the subpoena is directed have been sufficiently defined and described, as to whether each is material and relevant, whether the demand is oppressive and unreasonable, and as to whether the privacy of third persons has been invaded. If required by the circumstances, the individual documents should be inspected by the judge in court to pass upon these questions. The procedure is judicial, and protection can be furnished in no other way.

Remanded.

(Endorsed) Opinion. Filed Aug. 2, 1956.

PAUL P. O'BRIEN, *Clerk.*

In the United States Court of Appeals for the Ninth Circuit

No. 14778

IDA MAE HERMANN, IRVING E. HERMANN, ROBERT M. SMITH, M. B. SCOTT, HAROLD SHEIN, H. C. RICHARDS, GEORGE PATTERSON, LEONARD ROSEN, ORVILLE KELMAN, AND CAPTAIN G. D. THOMPSON, APPELLANTS

vs.

CIVIL AERONAUTICS BOARD, APPELLEE

JUDGMENT

Appeal from the United States District Court for the Southern District of California, Central Division.

This cause came on to be heard on the Transcript of the Record from the United States District Court for the Southern District of California, Central Division, and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that this cause be, and hereby is remanded.

(Endorsed) Judgment. Filed and Entered: August 2, 1956.

PAUL P. O'BRIEN, *Clerk.*

U. S. GOVERNMENT PRINTING OFFICE: 1956